

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Section 63.63 Application of CenturyTel of
Michigan, Inc. d/b/a CenturyLink
WC Docket No. 20-278
Comp. Pol. File No. 1639

ORDER

Adopted: November 23, 2020

Released: November 23, 2020

By the Chief, Competition Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we resolve a request from CenturyTel of Michigan, Inc. d/b/a CenturyLink (CenturyLink or Applicant) for waiver of the filing deadline requirement for emergency discontinuance applications filed pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act), and section 63.63 of the Federal Communications Commission’s (Commission) rules. Although CenturyLink failed to file its application within 65 days of the event that caused the discontinuance, reduction or impairment of its services in full compliance with the Commission’s rules, we find that good cause exists to grant CenturyLink’s waiver request.

II. BACKGROUND

2. On August 25, 2020, CenturyLink filed an emergency discontinuance application to address the unavoidable interruption of its “telecommunications services and other real-time two-way voice communications services” (Affected Services) to customers in limited portions of the Hope exchange, near the town of Edenville in central Michigan. The interruption of service occurred after substantial

1 47 U.S.C. § 214(a).

2 47 CFR § 63.63.

3 See 47 CFR § 63.63(a).

4 Application of CenturyTel of Michigan, Inc. d/b/a CenturyLink Pursuant to 47 C.F.R. § 63.63 for the Emergency Impairment of Service, WC Docket No. 20-278 (August 25, 2020), https://ecfsapi.fcc.gov/file/10825526406933/200825%20CTL%20Michigan%2063.63%20Application.pdf (CenturyLink Application). On October 2, 2020, CenturyLink filed supplemental information to update the record regarding its tracking of service impairments and its restoration efforts. Letter from Jeanne W. Stockman, Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 20-278 (October 2, 2020), https://ecfsapi.fcc.gov/file/100393857755/201002%20Michigan%20Sec%2063%2063%20Supplement%20REDAC TED.pdf (CenturyLink Supplemental Letter). On October 27, 2020, CenturyLink filed more detailed supplemental information regarding its tracking of service impairments and its restoration efforts. See Letter from Jeanne W. Stockman, Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 20-278 (October 27, 2020), (continued....)

rainfall caused the Edenville east dam on Wixom Lake to burst and the Edenville west dam to overflow late on May 19, 2020, which resulted in massive flooding and damage to CenturyLink's facilities. CenturyLink's cable facilities, which ran along the M30 North bridge, the M30 South bridge, the Curtis Road bridge, and under the riverbed near Baker Road, were impacted when the bridges and facilities were damaged or washed away entirely by the force of the flood waters.<sup>5</sup> CenturyLink submits that it became aware of the resulting impairment of service to approximately 148 customers on May 20, 2020.<sup>6</sup> Under section 63.63(a), a carrier is required to file an emergency discontinuance application no later than 65 days "after the occurrence of the conditions which have occasioned the discontinuance, reduction, or impairment" of service.<sup>7</sup> However, CenturyLink filed its application 33 days late on August 25, 2020 and requested a waiver of the filing deadline.<sup>8</sup>

### III. DISCUSSION

3. Under section 214(a) of the Act, before a carrier may discontinue, reduce or impair service, it generally must obtain from the Commission "a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby." However, the Act also makes an exception to allow the Commission to authorize an emergency discontinuance of service upon appropriate request.<sup>9</sup> Section 63.63 of the Commission's rules addresses applications for emergency discontinuance, reduction, or impairment of service, which typically are made after the occurrence of conditions that have occasioned a discontinuance, reduction or impairment of services.<sup>10</sup> Specifically, section 63.63(a) requires that when there is a discontinuance, reduction, or impairment of service caused by conditions that could not be reasonably foreseen by the carrier in sufficient time for the carrier to prevent the discontinuance, reduction, or impairment, the carrier must file an informal request with the Commission no later than 65 days after the occurrence of the conditions that caused the discontinuance, reduction, or

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<https://ecfsapi.fcc.gov/file/1027817622389/201027%20CTL%20Sec%2063.63%20Supplement%20WC20-278.pdf>  
(CenturyLink Second Supplemental Letter).

<sup>5</sup> CenturyLink Application at 1-2.

<sup>6</sup> CenturyLink Application at 1-4; CenturyLink Supplemental Letter at 1-2. Since this time, several customers have transitioned off of CenturyLink's service and service has now been restored to the vast majority of remaining CenturyLink customers. CenturyLink also is issuing credits on customer bills to ensure that customers are not charged for the duration of the service interruption. CenturyLink Second Supplemental Letter at 5.

<sup>7</sup> 47 CFR § 63.63(a). CenturyLink should have filed its emergency discontinuance application no later than July 23, 2020.

<sup>8</sup> CenturyLink Application at 4, note 5.

<sup>9</sup> Section 214(a) states, in relevant part, that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby; except that the Commission may, upon appropriate request being made, authorize temporary or emergency discontinuance, reduction, or impairment of service," without regard to the provisions of the section. *See* 47 U.S.C. § 214(a).

<sup>10</sup> 47 CFR § 63.63. Emergency discontinuance, reduction, or impairment of service means any discontinuance, reduction, or impairment of the service of a carrier occasioned by conditions beyond the control of such carrier where the original service is not restored or comparable service is not established within a reasonable time. For the purpose of this part, a reasonable time shall be deemed to be a period not in excess of the following: 10 days in the case of public coast stations; and 60 days in all other cases. 47 CFR § 63.60(c).

impairment.<sup>11</sup> The rule provides further that, in such emergency situations, a carrier is automatically granted discontinuance authority for 60 days, beginning the day it files its application, unless the Commission informs the carrier to the contrary within 15 days after the date of filing.<sup>12</sup> The rule also provides that the applicant may, by the 50th day after seeking discontinuance authority, request renewal of such authority.<sup>13</sup>

4. In accordance with section 63.63(b) of the Commission's rules, authority for CenturyLink's emergency discontinuance of service was automatically granted for 60 days, effective as of the date of its filing on August 25, 2020 through October 24, 2020.<sup>14</sup> CenturyLink failed, however, to comply with section 63.63(a) by timely filing a written request for emergency discontinuance within 65 days of the occurrence of conditions causing the impairment of the Affected Services.<sup>15</sup> CenturyLink instead filed its emergency discontinuance application 33 days after the deadline along with a request for waiver of the timing provisions of section 63.63(a).<sup>16</sup>

5. Although waivers of our rules are not routinely granted, we believe good cause exists for granting CenturyLink's request for waiver of the timing provisions of section 63.63 in this case based on the specific circumstances.<sup>17</sup> We are persuaded that a deviation from strict compliance with the Commission's emergency discontinuance application filing deadline is warranted here given the special circumstances that led to CenturyLink's late-filed application.<sup>18</sup> CenturyLink states that these special circumstances involved an inadvertent process error in response to the sudden flooding in not following the procedure that CenturyLink had established for logging these types of outages in its internal tracking system.<sup>19</sup> CenturyLink explains that the combination of this error and the unusually long duration of the

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<sup>11</sup> 47 CFR § 63.63(a). The request shall make reference to section 63.63 and show the following: (1) The effective date of such discontinuance, reduction, or impairment, and the identification of the service area affected; (2) The nature and estimated duration of the conditions causing the discontinuance, reduction, or impairment; (3) The facts showing that such conditions could not reasonably have been foreseen by the carrier in sufficient time to prevent such discontinuance, reduction, or impairment; (4) A description of the service involved; (5) The nature of service which will be available or substituted; (6) The effect upon rates to any person in the community; and (7) The efforts made and to be made by applicant to restore the original service or establish comparable service as expeditiously as possible. 47 CFR § 63.63(a)(1)-(7).

<sup>12</sup> 47 CFR § 63.63(b) (stating, in relevant part, that "[a]uthority for the emergency discontinuance, reduction, or impairment of service for a period of 60 days shall be deemed to have been granted by the Commission effective as of the date of the filing of the request, unless, on or before the 15th day after the date of filing, the Commission shall notify the carrier to the contrary.").

<sup>13</sup> See 47 CFR § 63.63(b).

<sup>14</sup> See 47 CFR § 63.63(b). Pursuant to this rule, CenturyLink's application was deemed granted for 60 days upon filing as staff did not notify CenturyLink on or before September 9, 2020 that its application would not be granted based on the circumstances described in the record and in light of CenturyLink's waiver request.

<sup>15</sup> See 47 CFR § 63.63(a).

<sup>16</sup> CenturyLink Application at 4, note 5.

<sup>17</sup> See 47 CFR § 1.3 (stating that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."). The Commission may exercise its discretion to waive a rule where (a) the particular facts make strict compliance inconsistent with the public interest, (b) special circumstances warrant a deviation from the general rule, and (c) such deviation will serve the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>18</sup> See *NetworkIP v FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (stating that the FCC must articulate the nature of the special circumstances justifying the waiver of a deadline).

event due to the significant flooding and damage it caused, led to the situation where the outages lasted more than 65 days, but did not trigger CenturyLink's tracking mechanisms that are designed to ensure timely filing under section 63.63.<sup>20</sup>

6. CenturyLink explains, more specifically, that for prolonged events where there are fewer than 100 impacted lines per cable, the standard process is for field employees to open a ticket and manually enter events into the tracking system that monitors outage reporting thresholds.<sup>21</sup> CenturyLink emphasizes that this manual entry into the tracking system of what are typically small events differs from the automatic entry that usually occurs for larger outages that typically affect more than 100 lines per cable.<sup>22</sup> According to CenturyLink, getting events logged into the system is critical for tracking purposes, but a CenturyLink employee neglected to do so immediately in this instance. CenturyLink explains that, once an event involving fewer than 100 impacted lines per cable is entered into the tracking system, a report is generated and monitored by employees who track the duration of that outage to ensure that CenturyLink meets the 65-day deadline for any necessary impairment filing with the Commission. CenturyLink adds that once an outage entered into the system reaches a 45-day duration, it triggers an internal investigation into whether any such impairment filing under section 63.63 will be necessary. CenturyLink acknowledges that the necessary tracking did not occur in this case because its employees failed to manually enter the outages into the system at the outset as required. CenturyLink asserts, however, that the issue was discovered through coordination with the Michigan Public Service Commission (MPSC) and that CenturyLink has taken steps to avoid a recurrence of this process failure by coaching the relevant employees on the correct process and the importance of following it.<sup>23</sup>

7. We further agree with CenturyLink that strict enforcement of the emergency discontinuance filing deadline would not be consistent with the public interest in this case given the totality of the circumstances.<sup>24</sup> In its definition for emergency discontinuance, reduction, or impairment of service and its rule for filing such applications, the Commission recognizes that unforeseen service impacts beyond the control of the carrier often may be addressed within a reasonable 60-day period without the need for filing an emergency discontinuance application with the Commission within 65 days.<sup>25</sup> We recognize that despite CenturyLink's failure to file a timely application with the Commission under the circumstances described here, CenturyLink nevertheless initiated immediate efforts to restore service to customers consistent with the goals of the emergency discontinuance rule.<sup>26</sup> As with all emergency discontinuance cases, it is clear that CenturyLink could not have reasonably foreseen or prevented the failure of two dams which resulted in massive flooding, damage to its facilities and supporting infrastructure, and the

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<sup>19</sup> See CenturyLink Second Supplemental Letter at 1.

<sup>20</sup> CenturyLink Second Supplemental Letter at 1.

<sup>21</sup> CenturyLink Second Supplemental Letter at 4.

<sup>22</sup> *Id.* CenturyLink notes that, although an aggregate of more than 100 customers served by four different cables were initially affected by the flood, each cable of fewer than 100 active lines required manual reporting into CenturyLink's tracking system. *Id.*

<sup>23</sup> CenturyLink Second Supplemental Letter at 5.

<sup>24</sup> See CenturyLink Second Supplemental Letter at 1.

<sup>25</sup> 47 CFR § 63.60(c) (defining emergency discontinuance, reduction, or impairment of service, in relevant part, as those where the original service is not restored or comparable service is not established within a reasonable time (60 days in most cases); 47 CFR § 63.63 (allowing 65 days, in most cases, for the filing of an informal application requesting authority for the emergency discontinuance, reduction, or impairment of service).

<sup>26</sup> See 47 CFR § 63.63(a)(7); see also 47 CFR § 63.60(c).

declaration of a state-wide disaster by the Governor of Michigan.<sup>27</sup> The record indicates that the flooding forced the evacuation of thousands of area residents.<sup>28</sup> But given the severity of the damage to critical supporting infrastructure in the area, CenturyLink submits that it focused on construction efforts and investigating ways to promptly restore service.<sup>29</sup> CenturyLink indicates that it began working with stakeholders to restore service to its impacted customers as soon as it became aware of the impairment,<sup>30</sup> consistent with the underlying purpose of the emergency discontinuance rule.<sup>31</sup> CenturyLink also explains that it has been in contact with the MPSC since the morning after the service disruption began.<sup>32</sup> Immediately following the dam breaches, CenturyLink updated the MPSC on the impact of the event, the damage CenturyLink sustained, the approximate number of customers affected, and its restoration efforts.<sup>33</sup> CenturyLink reports that it has responded to MPSC inquiries and has provided updates to the MPSC every two-to-three weeks on its service restoration efforts.<sup>34</sup> CenturyLink also states that, on August 13, 2020, it met by conference call with MPSC staff to go over in detail the damage that CenturyLink's facilities sustained. CenturyLink submits that this line of communication between CenturyLink and the MPSC demonstrates its engagement with regulators, and its openness concerning the impact of the event and its restoration plans and progress.<sup>35</sup>

8. In furtherance of these restoration efforts, CenturyLink devised plans to restore service to the vast majority of remaining affected customers through two construction projects that required CenturyLink to bore under the Tittabawassee River. CenturyLink also continued to work on alternatives for the remaining customers who would not be impacted by these initial construction plans.<sup>36</sup> According to CenturyLink, these construction efforts resulted in the restoration of CenturyLink service to 64 affected customers with only 13 customers currently remaining without service after accounting for a drop in the overall CenturyLink customer count.<sup>37</sup> We acknowledge that through these efforts, CenturyLink has

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<sup>27</sup> CenturyLink Application at 5. *See also* 47 CFR § 63.63(a)(3).

<sup>28</sup> CenturyLink Application at 2.

<sup>29</sup> CenturyLink Supplemental Letter at 2. CenturyLink indicates that in late September it also mailed postcards to affected customers to apologize for the service interruption, notify customers that it was working to restore service, and provide customers with a link to a website to allow them to check the status of their service restoration. *See* CenturyLink Supplemental Letter at 2. We note that, according to CenturyLink, these customers were immediately evacuated after the flood and most of them had returned to their homes at the time of its supplemental filing. CenturyLink Supplemental Letter at 2.

<sup>30</sup> CenturyLink Supplemental Letter at 2.

<sup>31</sup> *See e.g., In the Matter of Section 63.71 Application of Verizon New Jersey Inc. and Verizon New York Inc. for Authority to Discontinue Domestic Telecommunications Services*, Order, WC Docket No. 13-149, 28 FCC Rcd 13826 at paras.13-15 (2013) (Verizon Order) (granting Verizon's request for waiver of the 65-day filing deadline in § 63.63(a), and acknowledging Verizon's efforts to quickly restore service with minimal customer impact).

<sup>32</sup> CenturyLink Second Supplemental Letter at 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> CenturyLink Application at 3-4. CenturyLink states that, in the interim, wireless service has been available to affected customers. *See* CenturyLink Application at 6. According to CenturyLink, satellite voice service and satellite broadband service is also available in the area. *See* CenturyLink Supplemental Letter at 2.

<sup>37</sup> CenturyLink Supplemental Letter at 1-2. We note that, on October 14, 2020, CenturyLink filed a request for renewal of its emergency discontinuance authority for an additional 60 days and was granted an extension until December 24, 2020 to restore service to its 13 remaining affected customers. *See* Letter from Jeanne W. Stockman, (continued....)

managed to restore service to the vast majority of its customers in close to the same 60-day timeframe that would have initially been allowed under section 63.63 had CenturyLink filed a timely emergency discontinuance application. Given the totality of these circumstances, we find that strict enforcement of the emergency discontinuance filing deadline in this case would serve no purpose other than potentially discouraging other providers from future emergency discontinuance filings if they inadvertently miss the deadline. Such a result would not be consistent with the public interest, especially to the extent that it might impede the Commission's ability to become aware of an ongoing emergency disruption of service, the status of service restoration, and circumstances, unlike with CenturyLink here, where the provider might fail to undertake prompt efforts to restore service and engage in close coordination with the relevant state public utility commission.<sup>38</sup>

9. We note that the information required by the Commission's emergency discontinuance rule is critical to its ability to ensure that customers of communications providers are minimally affected by the discontinuance, reduction, or impairment of service due to conditions beyond a provider's control.<sup>39</sup> Accordingly, we emphasize that carriers remain obligated to file emergency discontinuance applications when service impairments such as CenturyLink's occur regardless of whether such carriers are able to meet the required filing deadline. CenturyLink complied with that obligation. However, we remind CenturyLink and other carriers that the Commission takes seriously the timeframes associated with its emergency discontinuance procedures and expects full compliance absent extraordinary circumstances. Thus, providers are reminded to periodically check their regulatory compliance processes to ensure they will work effectively when required. With this reminder, providers are notified that they may face enforcement action if emergency discontinuance filings are not made on a timely and complete basis and that mere process error may not be sufficient to justify a waiver in other cases with different factual circumstances.<sup>40</sup>

10. After evaluating the totality of the circumstances involved here, however, based on the specific circumstances of this case, we find that CenturyLink has demonstrated that good cause exists to grant its request for waiver.<sup>41</sup> We therefore grant CenturyLink's request for waiver of the 65-day filing deadline for this emergency discontinuance application.

#### IV. ORDERING CLAUSES

11. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91(b), 0.204(b), 0.291, 1.3 and 63.63 of the Commission's rules, 47 CFR §§ 0.91(b), 0.204(b), 0.291, 1.3, 63.63, IT IS ORDERED that CenturyLink's request for waiver of the 65-day filing deadline in 47 CFR § 63.63(a) IS GRANTED.

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Associate General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 20-278 (October 14, 2020), <https://ecfsapi.fcc.gov/file/1014247746656/201014%20CTL%20Renewal%20Letter%20Hope%20MI%20WC%2020-278.pdf>. CenturyLink indicates that it is exploring making a satellite phone offering available to these remaining customers. See CenturyLink Second Supplemental Letter at 5.

<sup>38</sup> CenturyLink Second Supplemental Letter at 1. We note that CenturyLink's emergency discontinuance application remains unopposed and we agree with CenturyLink that no other party appears to have been prejudiced by its late filing. CenturyLink Second Supplemental Letter at 2.

<sup>39</sup> See Verizon Order at para. 15. See also 47 U.S.C. § 201(b).

<sup>40</sup> See Verizon Order at para. 15.

<sup>41</sup> See 47 CFR § 1.3; see also 47 U.S.C. § 214(a).

12. Pursuant to section 1.103, of the Commission's rules, 47 CFR § 1.103, IT IS ORDERED that the grant is effective upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Pamela Arluk  
Chief  
Competition Policy Division  
Wireline Competition Bureau